

Attorneys for: Plaintiff Christopher Upham

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHRISTOPHER UPHAM,

Plaintiff,

vs.

HELENA F. FOX, Individually and as the
Personal Representative of the Estate of
Peter M. Fox, Deceased, and as Guardian
Ad Litem for REBECCA H. FOX and
ROBERT G. FOX, Minors,

Defendants.

CASE NO. C 08-1859 MMC

EX PARTE APPLICATION FOR
LEAVE TO AMEND; AND FOR
REQUEST FOR COURT TO RULE
WITHOUT APPEARANCE OF
COUNSEL; MEMORANDUM OF
POINTS & AUTHORITIES;
~~{PROPOSED}~~ ORDER THEREON

DATE :
TIME :
CTRM: 7

APPLICATION FOR LEAVE TO AMEND

Plaintiff Christopher Upham hereby applies ex parte to this court for an order granting leave to file a second amended complaint. The proposed second amended complaint is being delivered to chambers for review. This application is made on the grounds that such an amendment would be in the furtherance of justice and more particularly as follows.

Following a court trial ending October 30, 2008, wherein plaintiff herein was the prevailing party in case number: 2002ES0700012, venued in the Probate Court for the County of Beaufort, State of South Carolina, plaintiff timely filed his first amended complaint on November 7, 2008.

1 However, the filing of the first amended complaint appears now to have been precipitous.

2 The Probate Court Order Granting Petition for Subsequent Administration was not signed and
3 filed until December 5, 2008 and not received by plaintiff's counsel until December 9, 2008. A
4 copy of the order is attached hereto as Exhibit "A". Further, defendant Helena F. Fox was not
5 appointed personal representative of Peter Marlin Fox, deceased, until December 5, 2008. A
6 copy of the Certificate of Appointment is attached hereto as Exhibit "B".

7 The proposed amended complaint adds or modifies new paragraphs 45, 91, 146 and 156.

8
9 Dated: 2/26/09

LAW OFFICE OF DOUGLAS STENZEL

10
11 By:



DOUGLAS STENZEL
Attorney for Plaintiff
CHRISTOPHER UPHAM

Amended and Supplemental Pleadings

Federal Court Rule 15(a)(2) states in pertinent part:

“(2) *Other Amendments*. In all other cases, a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.” (Emphasis in original.)

DATED:

2/26/09

Respectfully submitted,

LAW OFFICE OF DOUGLAS STENZEL

By:



DOUGLAS STENZEL
Attorney for Plaintiff
CHRISTOPHER UPHAM

ORDER

no later than March 10, 2009,
GOOD CAUSE APPEARING, plaintiff is hereby allowed leave to file [^]his proposed
second amended complaint.

Dated: March 4, 2009


MAXINE M. CHESNEY